

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : **Chapter 11 Case No.**
:
LEHMAN BROTHERS HOLDINGS INC., et al., : **08-13555 (JMP)**
:
Debtors. : **(Jointly Administered)**
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**STIPULATION, AGREEMENT
AND ORDER BETWEEN BNC MORTGAGE LLC AND KONDAUR CAPITAL
CORPORATION PROVIDING FOR RELIEF FROM THE AUTOMATIC STAY
WITH REGARD TO CERTAIN REAL PROPERTY LOCATED IN SARANAC LAKE, NY**

TO THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE:

This Stipulation, Agreement and Order (the “Stipulation, Agreement and Order”) is entered into by and between BNC Mortgage LLC (“BNC”) and its affiliated debtors in the above referenced chapter 11 cases (the “Debtors”), as debtors and debtors-in-possession, and Kondaur Capital Corporation (“Kondaur,” together with BNC, the “Parties”).

RECITALS

A. On September 15, 2008 and periodically thereafter, Lehman Brothers Holdings Inc. (“LBHI”) and certain of its subsidiaries commenced with this Court voluntary cases (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). BNC, an indirect subsidiary of LBHI, commenced its Chapter 11 Case on January 9, 2009. The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to rule 1015(b) of the Federal Rules of Bankruptcy Procedure. The Debtors are authorized to operate their businesses and manage their

properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Notwithstanding this Court's order the directing joint administration (the "Joint Administration Order") [BNC ECF No. 5], on August 11, 2011 Kondaur filed a motion (the "Motion") seeking relief from the automatic stay on the docket of BNC's Chapter 11 Case [BNC ECF No. 17]. The Parties submit that this Stipulation, Agreement and Order, which is being submitted to the Court in accordance with the presentment procedures set forth in this Court's second amended order entered on June 17, 2010, governing case management and administrative procedures for these cases (the "Case Management Order") [ECF No. 9635], provides sufficient notice to parties in interest of the relief requested by Kondaur and BNC's proposed resolution of the matter.¹

C. Kondaur represents that it is the assignee of a mortgage (the "Mortgage") executed on October 6, 2005 by Thomas D. Stack (the "Borrower") as mortgagor in favor of Mortgage Electronic Registration Systems Inc. ("MERS"), as nominee of BNC Mortgage, Inc.,² as security for the repayment of the original principal sum of \$119,200 due under a note. The Mortgage granted MERS, as nominee of BNC, a security interest in certain real property located at 85 Margaret Street, Saranac Lake, New York (the "Property").

¹ Nothing contained herein shall constitute a waiver by the Debtors of any of the requirements of the BNC Joint Administration Order or the Case Management Order.

² BNC Mortgage, Inc. and BNC Mortgage LLC are the same entity. BNC was originally organized under the laws of Delaware as a corporation under the name "BNC Mortgage, Inc." On or about January 13, 1998, BNC changed its corporate form from a corporation to a limited liability company under the name "BNC Mortgage LLC." BNC is still referred to as "BNC Mortgage Inc." in those states in which it is registered to conduct business under its former name.

D. Kondaur represents that there was also a junior mortgage on the Property, also executed by the Borrower on October 6, 2005 (the Second Mortgage”), held by BNC Mortgage, Inc.

E. The Debtors have reviewed BNC’s records and determined that BNC transferred its interests in the Mortgage and the Second Mortgage to Lehman Brothers Bank, FSB (n/k/a Aurora Bank FSB) on or about November 22, 2005. Lehman Brothers Bank FSB subsequently transferred the Mortgage and the Second Mortgage to LBHI on or about November 29, 2005 and February 28, 2006, respectively. LBHI then transferred the Mortgage to CIT Group on or about November 29, 2005 and transferred the Second Mortgage to Structured Asset Securities Corporation (“SASCO”), a debtor in the above referenced chapter 11 cases, on or about February 28, 2006. SASCO, in turn, transferred the Second Mortgage to SAIL 2006-BNC1, a non-debtor securitization trust, on or about February 28, 2006. As a result of the above-described transfers, neither BNC nor any of the other Debtors held a direct interest in the Mortgage or the Second Mortgage as of the Commencement Date.

F. According to Kondaur, however, a record of BNC’s former interest in the Second Mortgages may remain on the local property records, creating an impediment to Kondaur’s acquisition of insurable title to the Property.

G. Accordingly, and out of an abundance of caution, Kondaur seeks entry of an order partially modifying the automatic stay extant in BNC’s chapter 11 case pursuant to section 362 of the Bankruptcy Code in order to allow Kondaur to exercise its non-bankruptcy rights and remedies as to the Property.

H. In light of the foregoing, and to ensure that Kondaur is not prohibited from exercising its rights with respect to the Property, the Parties have agreed, subject to approval of this Court, to the terms set forth below.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT IS HEREBY STIPULATED AND AGREED, BY AND BETWEEN BNC AND KONDAUR, THROUGH THEIR UNDERSIGNED COUNSEL, AND, UPON COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. This Stipulation, Agreement and Order shall have no force or effect unless and until approved by the Court (the “Effective Date”).

2. Upon the Effective Date, to the extent that the automatic stay is applicable, it shall be modified with respect to the interests of Kondaur, its successors and assigns in the Property and Kondaur, its successors and/or their assigns, shall be permitted to exercise their rights under applicable non-bankruptcy law against the Property.

3. Except as provided in paragraph 2, the provisions of section 362(a) of the Bankruptcy Code, including, without limitation, those provisions prohibiting any act to collect, assess, or recover a claim that arose prior to the Commencement Date from the Debtors’ estates and/or assets or property of the Debtors (as defined in section 541 of the Bankruptcy Code) shall remain in full force and effect.

4. Upon the Effective Date, the Motion shall be deemed resolved.

5. This Stipulation, Agreement and Order may only be amended or otherwise modified by a signed writing executed by the Parties.

6. Each person who executes this Stipulation, Agreement and Order by or on behalf of a Party represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation, Agreement and Order on behalf of such Party.

7. This Stipulation, Agreement and Order may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation, Agreement and Order to present any copy, copies, electronic copies, or facsimiles signed by the Parties.

8. This Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation, Agreement and Order.

Dated: September 13, 2011
Melville, New York

/s/ Jennifer Rando Cristano
Jennifer Rando Cristano

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Attorneys for Kondaur Capital Corp.

Dated: September 13, 2011
New York, New York

/s/ Jacqueline Marcus
Jacqueline Marcus

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Attorneys for Debtors
and Debtors in Possession

SO ORDERED:

Dated: New York, New York
September 26, 2011

s/ James M. Peck
Honorable James M. Peck
United States Bankruptcy Judge